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April 27, 1999

Magalie Roman Salas, Secretary
Federal Communications Commission
The Portals
445 12th Street, S.W.
Washington, D.C. 20554

RECEIVED
APR 27 1999
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

RE: PETITION FOR PARTIAL RECONSIDERATION

In re: Amendment of Parts 2 and 15 of the Commission's Rules to Further
Insure that Scanning Receivers Do Not Receive Cellular Radio Signals
ET Docket No. 98-76

Dear Ms. Salas:

Transmitted herewith, on behalf of Uniden America Corporation, is an original and nine (9) copies of a Petition for Partial Reconsideration of the Report and Order in the above-referenced proceeding.

Should there be any questions regarding this Petition, please contact undersigned counsel.

Sincerely,


Gregg P. Skall

Counsel for Uniden America Corporation

Enclosures

No. of Copies rec'd 049
List A B C D E

**Before the
Federal Communications Commission
Washington, DC 20554**

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| In the Matter of |) | |
| |) | |
| Amendment of Parts 2 and 15 of the |) | |
| Commission's Rules to Further Insure |) | ET Docket No. 98-76 |
| that Scanning Receivers Do Not |) | |
| Receive Cellular Radio Signals |) | |

PETITION FOR PARTIAL RECONSIDERATION

Introduction

1. Uniden America Corporation (hereinafter "Uniden"), pursuant to Section 1.429 of the Commission's Rules and Regulations, 47 CFR 1.429 (1998), respectfully submits this Petition for Reconsideration to the Commission's *Report and Order* ("Order") in the above-captioned proceeding, FCC 99-58, 64 Fed. Reg. 22559 (Apr. 27, 1999). The Commission's stated purpose of this Order is to ensure that scanning receivers ("scanners") do not receive cellular radio signals. Uniden has a strong interest in this proceeding in that these rule changes are the result of its Petition for Rulemaking, filed February 3, 1997.

Discussion

2. Generally, Uniden supports most of the rule changes contained in the Order. Uniden applauds the Commission's objective to eliminate the unauthorized interception of cellular radiotelephone conversations by scanners, and is gratified that the Commission clearly recognizes the legitimate and valued use of scanners. Furthermore, Uniden is pleased that its suggested image rejection level and the methods of "hardening" the circuitry to prevent unlawful

modifications were adopted within the scope of the Order. Scanner manufacturers will now have a clear set of guidelines with which to design and construct these popular and useful radio receivers. However, Uniden believes there are a few inadvertent oversights in the Order.

Warning Labels

3. The Commission has now required that *all* scanners be labeled pursuant to the new Part 15.121(f). The text of this label is as follows:

**WARNING: MODIFICATION OF THIS DEVICE TO RECEIVE
CELLULAR RADIOTELEPHONE SERVICE SIGNALS IS PROHIBITED
UNDER FCC RULES AND FEDERAL LAW.**

4. The definition given to scanning receivers by the Commission's rules now encompasses all receivers that automatically switch between two or more frequencies in the 30 to 960 MHz range. The Cellular Radiotelephone Service inhabits the 800 MHz band. However, some scanners are built with the capability only to receive frequencies much lower, for example, in the range of 30 MHz to 512 MHz. Therefore, scanners that obviously do not have the capability to intercept signals from the Cellular Radiotelephone Service, such as those which do not tune above 512 MHz, will be required to have the above mentioned label permanently affixed, according to the Order. Another example of this type of device would be a typical weather band scanner that has a limited tuning range in the 160 MHz region of the radio spectrum. There are certainly numerous other examples that fall inside this category. The inclusion of such scanners within the scope of those that must display the warning label must have been an oversight, for it clearly does not apply to their capability. Moreover, such a label would be misleading to the consumer who might be led to believe that the device has the internal capability to receive

signals in the 800 and 900 MHz bands other than those in the Cellular Radiotelephone Service.

5. Additionally, there is another reason against using the actual label language that appears within this Order. Currently, H.R. 514 is pending in the House of Representatives. H.R. 514, 106th Cong. (1999) ("H.R. 514"). That Bill would mandate the Commission to consider labels on scanners to warn against intentionally intercepting or divulging certain radio communications.

The actual text from H.R. 514 reads:

“(4) WARNING LABELS. - In prescribing regulations under paragraph (1), the Commission shall consider requiring labels on scanning receivers warning of the prohibitions in Federal law on intentionally intercepting or divulging radio communications.

6. Uniden believes that with the expected passage of H.R. 514, the Commission and scanner manufacturers will be required to revisit the matter of labels unless the language in the Order is changed to satisfy the intent and comply with the expected letter of the Congressional language. This would require another costly changeover to incorporate a revised label whenever the new law is enacted. Therefore, any label required by this Order should conform to the broader proposal of H.R. 514, rather than to a warning against illegal cellular interception modifications.

7. Uniden firmly believes that modifications to intercept cellular transmissions should not be possible due to the new technical design and hardening requirements contained within the Order. If scanners to which the new rules apply are properly certified by the FCC, then any individual scanner should be safe from improper use due to illegal modifications. In fact, the addition of such a label will likely serve only to plant in the mind of an otherwise innocent user, the idea of using it for unauthorized and illegal purposes. Uniden believes that the public is better off without such ideas! If someone is otherwise determined on defeating the protective devices

implemented, a warning will not deter them. The bottom line is that the warning label, as worded in the Order, may cause more trouble than it solves. Thus, Uniden asks the Commission to reconsider its decision to impose the intended label and to discard it within the scope of this proceeding. In its place should be substituted a label addressing the concern of H.R. 514 and using its language such as:

**WARNING: INTENTIONAL RECEPTION OR DISCLOSURE OF
CERTAIN RADIO COMMUNICATIONS MAY VIOLATE FEDERAL
LAW**

8. Finally, with regard to the label issue, Uniden believes a rule that requires a physical label for all scanners may be impractical for other reasons. There are some scanners that are so small or compact as to make inclusion of the full, required label impossible without a significant design modification. For these products, Uniden would intentionally have to make the casing larger than is otherwise required for the technology it holds, resulting in considerable waste with regard to production materials, including packaging, and inconvenience for the consumer who must handle and carry a unit larger than necessary. Moreover, if the size of the device were increased, then all associated items would increase by a proportional amount, creating additional and needless packing materials with increased shipping and storage cost for the manufacturers and distributors. Therefore, Uniden requests the Commission to apply a provision, similar to that which is already provided for at Section 15.19(b)(3) of its rules, to the labels that may be required for scanning receivers as a result of this Order. In this connection, it should be noted that the text of the label would continue to be on the display carton as well as in the information supplied to the user. Uniden believes that by making this allowance, the intent to warn against improper

usage is enhanced considerably without sacrificing the ability to keep the device as small as practical.

Inaccessibility of Circuitry

9. Yet another problem is presented by the new requirement that, in strict compliance with the Order, *all* scanners must demonstrate compliance to the requirement that “the tuning, control and filtering circuitry is inaccessible”. For those scanners that do not have a tuning range of concern for intercepting Cellular Radiotelephone Service signals, this requirement, too, is over-burdensome and probably unintended. The examples stated in the paragraphs above, describing devices outside the intended scope of this proceeding, highlight this concern. In this case, Uniden proposes an exemption to the hardening requirement for those scanners which only tune at or below 512 MHz. This should not be construed to imply that the image rejection requirements to cellular telephone frequencies should be waived for any device. It means only that Uniden believes the real concerns against improper modifications of scanners are with those that tune in the 800 MHz and 900 MHz region of the spectrum, not at those limited at or below 512 MHz.

New Applications Required

10. Finally, Uniden fears that, unless modified, the Order may be interpreted to mandate that all devices falling within the new definition of a scanner must be resubmitted to the Commission for a new equipment authorization, even if they do not have the capability to receive signals from the Cellular Radiotelephone Service. Were this to become the official interpretation of the new

rule, it would impose an undue application filing and processing burden, taxing the resources of both the manufacturing community and the Commission staff with no apparent benefit.

Solution

11. To remedy this situation, Uniden requests an amendment to the new paragraphs in Sections 15.121(a) and 15.121(f), to add new paragraphs as Section 15.121(g) and Section 15.121(h). These changes would allow an exemption for devices outside the scope and intent of the referenced Order. Additionally, they will change the labeling requirements so that the language is more aligned with the long term objectives of Congress to enhance proper scanner usage by making them incapable of receiving cellular telephone conversations.

Proposed changes

12. The new paragraph 15.121(a) would now read as follows:

Except as provided in paragraphs (c), (g), and (h) of this section, scanning receivers and frequency converters designed or marketed for use with scanning receivers, shall:

13. The new paragraph 15.121(f) would now read as follows:

(f) Scanning receivers shall have a label permanently affixed to the product, and this label shall be visible to the purchaser at the time of purchase, except when the device is so small or for such use that it is not practicable to place the statement specified below on it, the text associated with this requirement shall be conspicuously located on the display carton. The text shall also be printed in a prominent location in the instruction manual or pamphlet supplied to the user. The label shall read as follows:

**WARNING: INTENTIONAL RECEPTION OR DISCLOSURE OF
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“Permanently affixed” means that the label is etched, engraved, stamped, silkscreened, indelibly printed or otherwise permanently marked on a permanently attached part of the equipment or on a nameplate of metal, plastic, or other material fastened to the equipment by welding, riveting, or permanent adhesive. The label shall be designed to last the expected lifetime of the equipment in the environment in which the equipment may be operated and must not be readily detachable. The label shall not be a stick-on, paper label.

14. The added paragraph (g) would read as follows:

(g) Scanning receivers and frequency converters that only tune to frequencies at or below 512 MHz are exempt from the design restrictions stated in paragraph (a)(2) above.

15. The added paragraph (h) would read as follows:

(h) Scanning receivers and frequency converters that are designed solely for public services, such as weather monitors, are exempt from the labeling requirements in 15.121(f).

Summary

16. Uniden wishes to emphasize that it is very supportive of the Order and appreciates the hard work of the Commission’s staff in bringing the proceeding to this stage. Although the Order addresses the concerns in Uniden’s underlying Petition for Rule Making, Uniden believes that in some part an inadvertent result has been created for certain devices which was not the Commission’s intent. The simple rule modifications suggested above will rectify this matter while at the same time, provide the same degree of protection to the Cellular Radiotelephone Service against eavesdropping. Moreover, the labeling language should satisfy the anticipated requirements of H.R. 514. If adopted, the changes proposed in this petition would provide a clear direction for scanner manufacturers and users.

Respectfully submitted,

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